

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA
Case No. 8:17-cv-00031

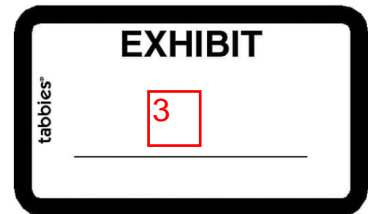
LISSETTE LARIOS ROOHBAKHSH, as
Personal representative of the ESTATE OF
FATIMA LISSETTE LARIOS and on behalf of
Next of kin, and NELSON LARIOS, as next of kin,

Plaintiffs,

v.

BOARD OF TRUSTEES OF THE NEBRASKA
STATE COLLEGES and CHADRON STATE
COLLEGE,

Defendants.



DEPOSITION OF PETER LAKE

Friday, December 14, 2018
10:24 a.m. to 5:40 p.m.
Pages 1 to 308

U.S. Legal Support
1800 2nd Street, Suite 875
Sarasota, FL 34236

REPORTED BY:
TERRI L. FERREIRA, COURT REPORTER



1 document that's at the end of Exhibit 1, the three-page
2 document, reflects a \$20,000 nonrefundable retainer.

3 Q. And do you know if you have exhausted that
4 retainer?

5 A. I do not believe that we have.

6 Q. Do you know how much you've billed to date?

7 A. Again, I'm not the one that does billing or
8 invoicing and my understanding of what occurs is that we
9 enter into a consulting arrangement of this type for
10 expert services and the retainer is transmitted and at
11 some point, Jennifer and others communicate about
12 invoices or billing or other financial matters. It's
13 not really what I do.

14 Q. And there's no other outstanding bills that
15 you're aware of or invoices that you're aware of; correct?

16 A. No.

17 Q. Did you read any depositions in this case?

18 A. No.

19 Q. You didn't read one deposition?

20 A. No, did not.

21 Q. You didn't read Shelley Dunbar's deposition?

22 A. I did not.

23 Q. You didn't read Sherry Simons' deposition?

24 A. As such, no. The only information I reviewed
25 is what is exactly in the index of documents.



1 Q. Let me ask you this: During the 2014, 2015
2 school year, do you know whether or not Chadron State
3 college had a Title IX coordinator, someone with that
4 job responsibility?

5 A. It would appear to me that someone at
6 Chadron State from the materials I reviewed was tasked
7 with Title IX response tasks.

8 Q. But you don't know whether or not they had
9 someone who specifically was designated as a Title IX
10 coordinator; correct?

11 A. I have not reviewed an organizational chart
12 and I do not know if the title Title IX coordinator was
13 a job or a principal job or associated with a compliance
14 job.

15 Q. And can you tell us what is a Title IX
16 coordinator?

17 A. The term "Title IX coordinator" is a term that
18 the Department of Education uses to colloquially
19 describe the part 106 compliance officer, pursuant to
20 regulations under Title IX. It's a term that they use
21 to describe the individual who has compliance
22 responsibilities and over the years that descriptor has
23 been connected with a variety of iterations from the
24 Department of Education about who those individuals are
25 and what responsibilities the Department of Education



1 Q. So without looking at, without looking at your
2 report, do you know one way or the other the nature of
3 the complaints made to Chadron State College
4 administrators, coaches or employees about any sort of
5 physical or emotional abuse perpetrated against Fatima?

6 MS. JOYCE: Objection, form.

7 THE WITNESS: I wouldn't attempt to make a
8 recollection of that type without refreshing my
9 recollection.

10 BY MR. GOULD:

11 Q. Okay. And you don't know when those reports
12 were made during that school year, do you?

13 MS. JOYCE: Objection, form.

14 THE WITNESS: I have knowledge of some of
15 those, but again, I'd have to refresh my recollection
16 to do it.

17 BY MR. GOULD:

18 Q. Sitting here right now, you don't know when
19 those reports were made?

20 MS. JOYCE: Objection, form.

21 THE WITNESS: If I refresh my recollection, I
22 would be able to identify the sequence of statements
23 that were made to various Chadron employees.

24 BY MR. GOULD:

25 Q. Do you know the nature of the complaints made



1 to the Chadron employees?

2 MS. JOYCE: Objection, form.

3 THE WITNESS: I'm not sure what the word
4 "nature" means.

5 BY MR. GOULD:

6 Q. What was specifically told to them about what
7 was going on with Fatima Larios?

8 A. Well, I mean, I think the documents speak for
9 themselves, but if you're asking me to reproduce the
10 documents from eidetic memory, I'm not able to do that
11 without recollection.

12 Q. I just want to know today you're giving
13 opinions on whether or not the university complied with
14 its responsibilities or whether or not it adequately
15 investigated these allegations and I want to know, do
16 you even know what the allegations were?

17 MS. JOYCE: Objection, form.

18 THE WITNESS: At the time I produced my
19 report, I reviewed all of the documents and did know
20 at that time, and again, I'm capable of refreshing my
21 recollection by looking back. We want to be very
22 specific about who said what to whom at what time.

23 BY MR. GOULD:

24 Q. Well, I want to know generally sitting here
25 right now, do you know what the allegations were in



1 regards to the type of suspected abuse or abuse that was
2 perpetuated against Fatima Larios when she was at
3 Chadron State College?

4 MS. JOYCE: Objection, form. He's already
5 told you that he needs to look at the documents to
6 refresh his recollection as to the specifics. So if
7 you want to ask him about the specifics, allow him to
8 refresh his recollection.

9 MR. GOULD: Please, no speaking objections.

10 BY MR. GOULD:

11 Q. I'm asking you generally, do you know what the
12 allegations were regarding the type of physical or
13 emotional abuse perpetrated against Fatima Larios when
14 she was at Chadron State College?

15 MS. JOYCE: Objection, form.

16 THE WITNESS: I'm not aware of any
17 allegations, per se.

18 BY MR. GOULD:

19 Q. Okay. Can you tell me -- tell me a little bit
20 about what you believe happened to Fatima -- strike
21 that.

22 Do you know what the basis of this complaint
23 is? Strike that.

24 Do you know, what are the allegations made in
25 plaintiffs' complaint in this case?



1 BY MR. GOULD:

2 Q. I didn't hear a last name that was stated.

3 MS. JOYCE: Again, you don't have to answer
4 that.

5 Move on. He's answered.

6 BY MR. GOULD:

7 Q. You told me that the case involves arguments;
8 correct?

9 MS. JOYCE: Objection, form.

10 THE WITNESS: I saw evidence in the documents
11 I reviewed that individuals perceived that there were
12 arguments that had occurred.

13 BY MR. GOULD:

14 Q. Do you know what the nature of those arguments
15 were?

16 A. No, I do not.

17 MS. JOYCE: Objection, foundation.

18 BY MR. GOULD:

19 Q. Do you know whether there was any threats of
20 physical violence made from one individual to another?

21 MS. JOYCE: Objection, form and foundation.

22 THE WITNESS: I am unaware of any specific
23 threats of violence.

24 BY MR. GOULD:

25 Q. Are you aware of any allegations that Fatima



1 or Brandon physically harmed the other?

2 MS. JOYCE: Objection, form and foundation.
3 whose allegations?

4 MR. GOULD: If the witness doesn't understand
5 the question, he can let me know; otherwise, you
6 know, he can answer the question. This is not your
7 deposition, it's the witness's deposition.

8 MS. JOYCE: Just giving you the opportunity to
9 clarify.

10 THE WITNESS: I have trouble with the word
11 "allegations." I mean, technically the answer's no
12 to your question.

13 BY MR. GOULD:

14 Q. Do you know whether or not there was any
15 reports regarding physical violence between Fatima and
16 Brandon while they were at the Chadron State College?

17 MS. JOYCE: Objection, form and foundation.

18 THE WITNESS: I have trouble with the word
19 "report."

20 BY MR. GOULD:

21 Q. What is your trouble with the word "report"?

22 A. I need to know what you mean by that.

23 Q. What is your understanding of the word
24 "report"?

25 A. It varies on the circumstances. That's a



1 little too open ended for me to answer. I'm actually
2 more curious what your understanding is.

3 Q. Okay. So are you saying you can't answer that
4 question because you don't know what I mean by saying
5 report?

6 A. Yes.

7 Q. Was there any information provided -- was
8 there any information provided to any Chadron State
9 college employees about actual or suspected physical
10 violence between Fatima and Brandon?

11 MS. JOYCE: Objection to form.

12 THE WITNESS: I'll do my best with this, but I
13 recall seeing some information that some individuals
14 that, I believe, approached an athletic director,
15 assistant athletic director with some concerns. I
16 wouldn't characterize those as reports, but I think
17 they may have raised concerns about things they had
18 heard.

19 BY MR. GOULD:

20 Q. And can you tell me what were the things that
21 they heard?

22 A. I would need to refresh my recollection from
23 the narrative that I was provided.

24 Q. So sitting here you don't know what things
25 were heard by other students?



1 MS. JOYCE: Objection, form.

2 THE WITNESS: I would know if I were able to
3 refresh my recollection.

4 BY MR. GOULD:

5 Q. Okay. But without looking at your report,
6 sitting here today, you don't know what the specific
7 things that were heard and relayed to Chadron State
8 college employees was?

9 MS. JOYCE: Objection, form.

10 THE WITNESS: I would only feel comfortable
11 testifying after I refreshed my recollection. I
12 don't want to misstate what I reviewed or what other
13 people said.

14 BY MR. GOULD:

15 Q. Do you know who were -- what were names of the
16 students that made reports to Chadron State College
17 employees about Brandon and Fatima's relationship?

18 MS. JOYCE: Objection, form.

19 THE WITNESS: Also in the documents that were
20 provided to me, and I could refresh my recollection
21 and give you those names.

22 BY MR. GOULD:

23 Q. Sitting here today, without looking at your
24 report, you don't know who those individuals were?

25 MS. JOYCE: Objection, form.



1 THE WITNESS: Same answer as before, I would
2 know if I were able to refresh my recollection.

3 BY MR. GOULD:

4 Q. And do you know what those individuals
5 expressly told the coaches about what the relationship
6 was between Brandon and Fatima?

7 MS. JOYCE: Objection, form.

8 THE WITNESS: I would know if I were able to
9 refresh my recollection.

10 BY MR. GOULD:

11 Q. Do you know whether or not there were any
12 reports made to Chadron State College's resident staff
13 regarding Brandon and Fatima's relationship?

14 MS. JOYCE: Objection, form.

15 THE WITNESS: Again, I'll do my best with
16 this, but I recall that I saw a variety of entries
17 from resident staff about Fatima.

18 BY MR. GOULD:

19 Q. And what were those entries, what did they
20 describe, what did they say?

21 A. Again, the document speaks for themselves, and
22 I'd be glad to share them with you if you would --

23 Q. Well, Mr. Lake, you're here to testify about
24 your opinions in this case and the basis for those
25 opinions and I'm trying to understand your knowledge of



1 Q. Okay. But can you tell me, what was the
2 information, can you tell me anything you know about the
3 information that was provided from Fatima's softball
4 teammates to the softball coaches?

5 A. I can if we pull the emails up.

6 Q. Okay. So sitting here today with your entire
7 report in front of you, you can't tell me anything about
8 what information was provided to Fatima's softball
9 coaches from the players?

10 MS. JOYCE: Objection, form.

11 THE WITNESS: I'd feel most comfortable
12 refreshing my recollection so as to get exactly what
13 they said right because you're basically asking me to
14 reproduce precise conversations from my eidetic
15 memory, and I'm not able to do that at this time.

16 BY MR. GOULD:

17 Q. I don't want you to produce precise
18 information, I want you to tell me anything that you can
19 recall at all, any information about what information
20 was provided from Fatima's teammates to the softball
21 coaches about Brandon and Fatima's relationship or about
22 Fatima in general?

23 MS. JOYCE: Objection, form.

24 THE WITNESS: The overarching thing that
25 appears to me in this is I was unable to detect



1 actual notice to Chadron for purposes of Gebser and
2 Davis from anyone anywhere and particularly from
3 Fatima herself.

4 BY MR. GOULD:

5 Q. That wasn't my question. I move to strike
6 your answer as nonresponsive.

7 I want to know what information, if anything,
8 can you tell me about the reports made from the softball
9 players to the coaches?

10 MS. JOYCE: Objection, form.

11 THE WITNESS: What I'm going to say and you
12 can strike it if you choose is I didn't see actual
13 notice for purposes of the Gebser and Davis from
14 anyone to any other person at Chadron State based on
15 any of the emails that I looked at.

16 BY MR. GOULD:

17 Q. And who were the softball player teammates
18 that made the reports to the softball coaches?

19 MS. JOYCE: Objection, form, and asked and
20 answered.

21 THE WITNESS: Their names are reflected in the
22 emails. I need to refresh my recollection to pull --
23 I'd need to pull the emails up to get their names.

24 BY MR. GOULD:

25 Q. So without actually, physically looking at the



1 Q. -- from the softball player teammates?

2 MS. JOYCE: Objection, foundation.

3 THE WITNESS: I do recall that there was some
4 communication with the individual charged with
5 compliance obligations who appeared to have Title IX
6 responsibilities.

7 BY MR. GOULD:

8 Q. And what was the communication with Fatima?

9 A. Again, it's in the emails, and specifically, I
10 would want to refresh my recollection to get the exact
11 statements that were made.

12 Q. But sitting here today, can you tell me
13 anything about the communications between Fatima and the
14 coaches or Fatima and anybody from Chadron State
15 college?

16 MS. JOYCE: Objection, form.

17 THE WITNESS: What I recall is that the
18 coaches received some information that they felt
19 apparently they wanted to share with compliance and
20 Title IX at Chadron State and that's the extent
21 without refreshing my recollection I feel comfortable
22 trying to construct from memory.

23 BY MR. GOULD:

24 Q. Okay. Do you know whether the coaches --
25 strike that.



Title IX violations?

MS. JOYCE: Objection, foundation.

THE WITNESS: Because I'm not recalling who that individual is, I can't answer any other questions about --

BY MR. GOULD:

Q. Do you know who Sherry Simons is?

A. If her name appears in the email thread, I would be able to locate her, but otherwise I do not.

Q. Do you know who Jessica Eatman is?

A. Without looking at the documents, I'd want to be careful about -- this name sounds familiar to me, but I'm not sure I can locate her specifically without refreshing my recollection.

Q. Do you know Cassidy Mitchell is?

A. Same.

Q. Do you know who Aspen Eubanks is?

A. Same.

Q. Do you know who Erin Gruwizovitz is?

A. I'm -- I almost need you to spell that for me to have a sense of what -- it seems like that's a difficult name to pronounce.

Q. But do you know who Erin G is, referred to as Erin G in this case?

A. Erin G, if she appears in the email thread,



1 THE WITNESS: I'm aware of a couple of
2 incident reports that were provided to me. One
3 appears to straddle January 1st of 2015, '16, 2015,
4 and another on January 20th.

5 BY MR. GOULD:

6 Q. And can you tell me, was there any information
7 in those reports indicating Fatima was the potential
8 victim of domestic violence or dating violence?

9 MS. JOYCE: Objection, form.

10 THE WITNESS: I'd have to pull those incident
11 reports up again to see exactly what they say.

12 BY MR. GOULD:

13 Q. Was there any information in those incident
14 reports involving these arguments or fights between
15 Brandon and Fatima?

16 A. I know there was information about quarreling
17 that had occurred between them in the email threads and
18 in the documents I reviewed. I can't locate it without
19 specifically pulling them up to the incident reports;
20 I'm not exactly sure what those accident reports
21 relate --

22 Q. What quarreling are you referring to?

23 A. Between Fatima and Brandon.

24 Q. And when you say the word "quarreling," what
25 do you mean?



1 discrimination associated with it.

2 Q. If the physical altercation was a domestic
3 situation, would that fall under your purview as a Title
4 IX coordinator?

5 MS. JOYCE: Objection, foundation.

6 THE WITNESS: Federal guidance since the
7 VAWA/SAVE regulations has essentially pushed the
8 VAWA/SAVE violations like domestic violence as
9 something in the purview of the Title IX coordinator
10 to consider. Now, technically it's not Title IX,
11 it's Clery, that many of us will examine those types
12 of things.

13 BY MR. GOULD:

14 Q. So a Title IX coordinator -- strike that.

15 So do you know in this, in this case, do you
16 know why Shelly Dunbar was -- strike that.

17 Do you know who was responsible for
18 investigating the reports of dating violence going on
19 between Brandon and Fatima?

20 MS. JOYCE: Objection, form.

21 THE WITNESS: I did not actually have that
22 knowledge. I'm aware that Dunbar had Title IX
23 coordinating responsibilities and I saw evidence in
24 what I looked at of what I would call, you know,
25 otherwise determining what's occurring and so I saw



1 compliance with the core DOE metric of response,
2 which is investigate or otherwise determine, but what
3 I did not see evidence of is a full-blown formal
4 investigation like kicking to an external party to do
5 it or reference to, you know, an investigative body
6 of some kind.

7 BY MR. GOULD:

8 Q. And you don't know whether or not Shelly
9 Dunbar was the one responsible for the investigation
10 because you never read her deposition; right?

11 MS. JOYCE: Objection, form and foundation.

12 THE WITNESS: It is correct that I did not
13 read her deposition and there are probably many
14 reasons I don't know exactly what she did because,
15 again, the knowledge I had was limited by what I was
16 asked to review.

17 BY MR. GOULD:

18 Q. Well, would you have wanted to know what her
19 job responsibility was specifically as it relates to
20 reports involving Fatima and Brandon?

21 A. For the purposes of what I was asked to do,
22 actually no, because without actual notice under Gebser
23 and Davis there's no need to do anything and so it
24 really doesn't matter to me what job assignments people
25 have; if the institution hasn't even received actual



1 regulatory compliance?

2 A. Oh, absolutely because when you're trying to
3 coordinate Title IX response, technically you are a part
4 106 coordinator, but because of guidance from the
5 Department of Ed connecting the Clery Act to operations
6 of the Title IX coordinator, you are actually the Title
7 IX slash sometimes Clery Act coordinator, and they just
8 don't speak of it that way, but that's actually your
9 job. And it's actually really significant because, you
10 see, the Clery Act framework provides for administrative
11 fines and they have often been rather severe, so that
12 obligation from a coordinator's point of view, if you
13 want to come in to administrative compliance, you're
14 well aware of the fact that the new VAWA/Save
15 requirements have a special force of law for
16 administrative enforcement purposes.

17 But again, the thing here, and I just don't
18 think Ms. Schuster really fully understands this is that
19 which is a legal standard for one purpose is not a legal
20 standard for others, and by it's very nature, these
21 roles were designed not to be for use in civil actions
22 for damages in court.

23 Q. So, and I see no citations in your response to
24 question 1A; what is the basis for that opinion?

25 A. The regulations themselves.



1 Q. So your response to question 1A is not based
2 on any facts of this case; correct?

3 A. It's based on legal fact.

4 Q. But not on any specific facts relevant to the
5 Fatima Larios's case; correct?

6 A. Well, it isn't necessarily to make the
7 statements that I made to have any external facts
8 whatsoever. In fact, her assertion I think just -- only
9 to the extent as an important framework for discussion,
10 to that extent, you know, my answer is no, actually it
11 doesn't for all purposes and you want to be clarifying
12 on what exactly you mean by important framework.

13 Q. Okay. So you ultimately have a disagreement
14 with her opinion, her opinion on what the relevant laws
15 are to this case; right?

16 MS. JOYCE: Objection, form.

17 THE WITNESS: I mean, I think she's wrong.

18 BY MR. GOULD:

19 Q. Okay. But you're arguing with her
20 interpretation of the relevance of the Clery Act;
21 correct?

22 A. I suppose it could be characterized that way,
23 but wrong is wrong, gray is gray.

24 Q. Okay. Your opinion, your opinion 1A doesn't
25 require you to have an analysis -- strike that.



1 I'm looking here now at question 1B and then
2 your response?

3 A. Uh-huh.

4 Q. Do you agree with Ms. Schuster's statement
5 that when a school knows or reasonably should know of
6 possible sexual violence, it must take immediate and
7 appropriate steps to investigate or otherwise determine
8 what occurred?

9 A. What I tried to clarify here is what OCR has
10 actually said as opposed to what she said and it
11 deviates slightly and I think in some ways importantly,
12 not the least of which was a consistent problem I found
13 throughout the report, was conflating standards for
14 money damages in court with OCR guidance and then,
15 frankly, in some cases either colloquializing or
16 mischaracterizing actual OCR guidance by using
17 argumentative terms.

18 Q. In regards to your number of opinions in this
19 case stating that there was insufficient actual notice
20 sufficient to warrant money damages in court; is that
21 right?

22 A. Most of the opinions I've delivered in this
23 report are similarly pointing out that the assertions
24 made by Ms. Schuster about the governing standards under
25 Title IX are inaccurate or misleading.



1 Q. Okay.

2 A. And one of them in particular is that I keep
3 trying to clarify that if the issue presented, which is
4 the only issue that was really presented to me is
5 whether or not what are the governing standards for
6 money damages in court, Gebser and Davis, statements
7 like when a school knows or reasonably should know of
8 possible sexual violence, it must take immediate and
9 appropriate steps; this is -- these are things that are
10 derived from guidance, not -- and are inconsistent with
11 Gebser and Davis and deliberately so because the Gebser
12 and Davis cases imagined that OCR enforcement would
13 substantially deviate from enforcement in court.

14 Q. Okay. So are most of your opinions based off
15 of the opinions in Gebser and Davis?

16 MS. JOYCE: Objection, form.

17 THE WITNESS: No, they are based on Gebser
18 Davis, they're based on OCR guidance, they're based
19 on knowledge of the Clery Act and how it operates
20 with VAWA/Save.

21 THE COURT REPORTER: I'm sorry, can you say
22 what -- what is that last word you said?

23 THE WITNESS: Sorry, it's VAWA/Save. It's
24 V-A-W-A-/S-A-V-E.

25 THE COURT REPORTER: Thank you.



1 THE WITNESS: Actually, the code of federal
2 regulations has some specific mandates about exactly
3 what needs to be covered. We could pull it if you
4 want.

5 BY MR. GOULD:

6 Q. Okay. Let's look at your response to question
7 1B here.

8 A. Okay.

9 Q. Is the basis for your response here other
10 statutes and laws?

11 MS. JOYCE: Objection, form.

12 BY MR. GOULD:

13 Q. Strike that.

14 What is the basis, what is the basis for this
15 response, what are you relying on?

16 A. This particular response I relied on Gebser
17 and Davis, governing guidance documents from OCR over
18 the years, and let's see if there's anything else that's
19 here that -- and I also did look at the Ohio and Harris
20 case, which I found inadequate.

21 Q. So your response to question 1B relies almost
22 entirely on case law; correct?

23 MS. JOYCE: Objection, form, misstates
24 testimony.

25 THE WITNESS: It's actually incorrect with



1 what I said because I said it's Gebser Davis, OCR
2 guidance, which is not case law and then I did also
3 have a quick look at the Ohio Harris case, which I
4 don't think is actually even relevant here, but...

5 BY MR. GOULD:

6 Q. In terms of determining what duty the
7 university had to Fatima Larios, do you intend to offer
8 an opinion as to what duty the district court should
9 apply in this case?

10 A. I would almost object on that one, but it's
11 not my job to tell a federal judge what the law is, nor
12 do I see an expert as a proxy for oral argument on legal
13 cases, but I do think that if I'm asked by a court of
14 competent jurisdiction to discuss how OCR administrative
15 enforcement has deviated from Gebser and Davis since
16 1999 or particularly since 2001, I'm more than competent
17 to help a court of competent jurisdiction do that should
18 they seek my advice on that.

19 Q. Have you ever seen a situation where the Court
20 sought testimony from an expert to advise the Court as
21 to what the duty is in a case, what the legal duty is in
22 a case?

23 MS. JOYCE: Objection, form.

24 THE WITNESS: It's interesting how experts on
25 legal duty can influence legal opinions. As you may



1 in is what I'm doing right here and right now.

2 BY MR. GOULD:

3 Q. Do you know -- okay. I'm going to -- strike
4 that.

5 Do you know whether or not Sawny -- strike
6 that.

7 Do you know whether or not Shelley Dunbar,
8 Chadron's Title IX coordinator, had any training on how
9 to conduct Title IX investigations or analyze potential
10 Title IX violations before she became the Title IX
11 coordinator?

12 MS. JOYCE: Objection, form and foundation.

13 THE WITNESS: Yeah, I may or may not know her.
14 I don't have any specific recollection. I do not
15 recall if she's ever been attending anything that
16 I've done education or training-wise. I seem to
17 recall someplace in Sandra Schuster's report that
18 training was done at Chadron and if she were there at
19 the time, I would assume she would have been there or
20 part of it, but I didn't even check the timeline to
21 see, to see what she's doing, so.

22 BY MR. GOULD:

23 Q. Do you know whether -- so you don't know what
24 type of training, if any, Shelley Dunbar underwent prior
25 to becoming Title IX coordinator; correct?



1 A. That's correct, and it wouldn't really have
2 been relevant to what I was looking at because whether
3 she's trained or not, if she receives actual notice,
4 Gebser and Davis says she has to act on it and I wasn't
5 asked to assess Chadron's risk of losing a Title IX
6 case; I was simply asked the questions that were
7 presented to me.

8 Q. Who crafted these questions?

9 A. These came to me under cover of letter, which
10 I believe we've reproduced, and it was my understanding
11 was -- this came from the law firm and I would assume
12 primarily George.

13 Q. Okay. So the lawyers sent you the questions,
14 and you were just answering them?

15 A. I did not generate these questions, they were
16 posed to me.

17 Q. Okay. Do you know whether or not the
18 university can be civilly liable if they fail to train
19 their employees on how to respond to Title IX
20 violations?

21 MS. JOYCE: Objection, form and foundation.

22 THE WITNESS: That question goes pretty well
23 beyond the scope that I was engaged for because, you
24 know, potentially, I suppose, theoretically, and, you
25 know, again, I don't even really think about this,



1 how to assess whether somebody has a competency, a high
2 competency in conducting Title IX investigations? Are
3 you going to present facts and see if they're applying
4 what you taught?

5 MS. JOYCE: Objection, form.

6 THE WITNESS: It's a heck of a question. It's
7 more of a discussion with an academic committee.
8 Better watch out, you might end up like me teaching,
9 sound like a professor.

10 we're in the curriculum development mode right
11 now; I mean, that's where we are with this, so it's
12 hard to say exactly where that's going to come out,
13 and again, one of the challenges is that this isn't
14 like the American Arbitration Association training or
15 JAMS training, where there are really specific things
16 that people have to be trained on to be a qualified
17 arbitrator or mediator; this field lacks those kind
18 of standards. We don't have the American Title IX
19 coordinator's act that says these are the things; if
20 we did, we'd be a little farther down the road. I
21 tend to think eventually we will have something like
22 that, but I don't know if I'll live long enough to
23 ever see something like that.

24 BY MR. GOULD:

25 Q. Okay. I'm looking here at question 3A to your



1 report. Okay. Your response here is based off of
2 Gebser and Davis; correct?

3 A. I'm just rereading it. Gebser and Davis and
4 OCR guidance.

5 Q. Okay. Now, are there certain -- under certain
6 factual circumstances, would a university be required to
7 engage in a reasonably diligent inquiry under Gebser and
8 Davis?

9 MS. JOYCE: Objection, form.

10 THE WITNESS: I mean, it essentially calls for
11 a legal opinion, analyzing the cases. I mean, I have
12 talked about them, so I'll give you my thoughts on
13 that. I'm of the opinion that Gebser and Davis are
14 so narrowly decided that the moment actual notice is
15 recovered, I think institutions could comply with the
16 deliberate indifference standard very easily by
17 taking an action independent of any investigation
18 whatsoever. I don't think it's a good idea. I would
19 never encourage somebody to do that because I think
20 you could have due process or other issues. But
21 what's noticeable in Gebser and Davis is the Court
22 was very concerned about the administrative burden on
23 colleges trying -- and universities or education
24 facilities trying to manage this and the idea of
25 creating a constitutionally or statutorily created



1 training mandate, it's pretty obvious that the
2 majority steers clear of that as they possibly could.

3 BY MR. GOULD:

4 Q. Well, so there are a set of facts in which a
5 university would be required to engage in a reasonably
6 diligent inquiry into what had occurred; correct?

7 MS. JOYCE: Objection, foundation.

8 THE WITNESS: Well, again, I would say that
9 the question the way it's formulated is a little
10 problematic because the answer technically could be
11 no under Gebser and Davis and even for OCR purposes,
12 the standard that is articulated by Expert Schuster
13 is not exactly the one that's used by us here.

14 BY MR. GOULD:

15 Q. So here's my next question: In your response
16 to question 3A, are you relying on any facts in this
17 case to reach that opinion?

18 A. This question basically asks a question about
19 law and regulatory mandates, so you could substitute
20 Chadron for any university in the United States, you'd
21 get the same answer.

22 Q. Okay. And is that the same thing for your
23 response to question 3B?

24 A. Let's have a look. Yes.

25 Q. Okay. Is that the same response you have for



1 question 3C?

2 A. Yes.

3 Q. So the facts of this specific case don't
4 really matter in terms of what your opinion is in
5 response to question 3C; right?

6 A. You could substitute any college or university
7 in America and get the same answer.

8 Q. And is that the same response you have for
9 question 3D?

10 A. 3D is a little more complicated because Ms.
11 Schuster makes this assertion about five primary
12 institutional requirements and I had to sort of
13 methodically pick out exactly what OCR said opposed to
14 that assertion, but at the end of the day, it
15 essentially is the same answer because these regulatory
16 requirements have been applied generally to so-called
17 recipients throughout the United States.

18 Q. Okay. So the specific facts of this case
19 don't have -- have no bearing on your response to
20 question 3D; right?

21 MS. JOYCE: Objection, form.

22 THE WITNESS: I mean, you know, except for the
23 fact that only -- this question's only triggered
24 because of this case. You know, the basic statements
25 in here about OCR guidance, Gebser and Davis, remain



1 true, whichever institution you're talking about.

2 BY MR. GOULD:

3 Q. And the facts don't matter; correct?

4 MS. JOYCE: Objection, form.

5 THE WITNESS: Again, I guess they do matter at
6 some level because we wouldn't be having the
7 conversation if it weren't for this.

8 BY MR. GOULD:

9 Q. And in which facts are you relying on to have
10 that opinion?

11 A. Well, if no one were suing Chadron, I'd doubt
12 I'd be here.

13 Q. Other than that, is there any other facts that
14 you're relying on in that response?

15 A. No.

16 Q. Okay. Now, I'm looking at question 3E; do you
17 have the same response here, the specific facts of this
18 case have no bearing on your answer to question 3E?

19 MS. JOYCE: Objection, form.

20 THE WITNESS: This one does blend, I think,
21 Chadron with statements that would apply generally to
22 any institution and because there were indications in
23 the materials that I looked at that suggested there
24 was hearsay, the statement, even a rumor, you know,
25 is sort of a characterization potentially of that, so



1 I was thinking about the email chain that I looked at
2 when I answered this question, but in the end, the
3 answer is the same.

4 BY MR. GOULD:

5 Q. Do any of the opinions you've given in this
6 case or are any of the opinions you gave in this
7 case -- strike that.

8 Do any of the opinions you give in this case
9 rely on the facts of the case at all?

10 MS. JOYCE: Objection, form.

11 THE WITNESS: I mean, my opinions are based on
12 the materials that were reviewed to me and so the
13 entire predicate for the opinions was this packet of
14 material I looked at. I found in many cases that I
15 didn't need to make particular reference to any
16 particular item that appeared in there, but there was
17 in particular, I think at the end, some questions
18 that related to an understanding of OCR's
19 administrative closure of the matter and so I would
20 not have been able to form an opinion on that without
21 reviewing what OCR --

22 BY MR. GOULD:

23 Q. Just so we're clear, so you said there's one
24 opinion in which you actually had to rely on the facts
25 to give a response?



1 MS. JOYCE: Objection, form.

2 THE WITNESS: I didn't actually say that, but
3 what I did say is there is one that I would not have
4 been able to answer without reading OCR's
5 September 26th, 2017, letter, and that's seven.

6 BY MR. GOULD:

7 Q. Have you ever worked for OCR?

8 A. No.

9 Q. Have you ever performed investigations on
10 behalf of OCR?

11 A. No.

12 Q. Have you ever been involved in any capacity
13 with an OCR investigation?

14 A. I've worked with recipients that are under
15 investigation regularly.

16 Q. So you assisted in responding to OCR's request
17 for information, things like that?

18 MS. JOYCE: Objection, form.

19 THE WITNESS: It's a bit of a non sequitur, so
20 I don't actually construct responses to OCR's
21 requests, that's lawyer work, but I may actually help
22 administrators in the process of doing that. In some
23 cases it's working within the parameters of an agreed
24 to voluntary resolution.

25 BY MR. GOULD:



1 not finding sufficient evidence to support either an
2 individual or systemic finding and presumably not
3 limiting the individual finding to individuals other
4 than Ms. Larios is influential to me. I mean, --

5 Q. Individual finding of what?

6 A. Exactly what they said, that there was not
7 sufficient evidence to support either an individual or
8 systemic finding against Chadron State.

9 Q. Individual finding of what?

10 A. well, for purposes of what they investigate,
11 to see if there's been an unaddressed hostile
12 environment, whether there's been prompt --

13 Q. So what is your understanding of what OCR was
14 investigating in this case?

15 A. well, that's an interesting thing because we
16 don't always know exactly what they're looking at, but
17 an educated guess based on what was happening in transit
18 in this time period is that it appears that Chadron was
19 under systemic review as a result of the individual
20 complaint. The new processing manual that came in in
21 the summer of '17 allowed a more quick administrative
22 resolution in some matters and it appears OCR exercised
23 that new processing manual to essentially end the
24 systemic finding. But when they look, they can look
25 thoroughly through any aspect of your Title IX



1 compliance program, and frankly, they're also free to
2 identify information of federal compliance issues in
3 areas other than this, so sometimes these will lead to
4 some interesting things related to Clery compliance.

5 Q. Are you just speculating as to what you
6 believe Title -- OCR was investigating in regards to the
7 Fatima Larios incident?

8 MS. JOYCE: Objection, form.

9 THE WITNESS: I'm making an expert assessment
10 based on a tremendous amount of experience observing
11 OCR behavior and how they resolve matters. It is
12 unknown exactly what they did and why they did it,
13 but what they said is very telling because they did
14 add that specific line, not obtained sufficient
15 evidence to support either an individual or systemic
16 finding. And they would have been able to simply
17 close the case administratively without making that
18 statement, so.

19 BY MR. GOULD:

20 Q. Do you know the basis of OCR's statement
21 there?

22 A. Other than what they said, that's all I know.

23 Q. Okay. So you don't know what information was
24 provided to OCR; correct?

25 MS. JOYCE: Objection, form and foundation.



1 THE WITNESS: That's actually incorrect
2 because I am aware -- I was shown actually what
3 Chadron State provided in response to OCR questions
4 and looked at that material, so I saw what Chadron
5 sent to OCR.

6 Now, I don't know -- they were free to look at
7 other things or disregard it. I did not see the
8 complainant's initiating documents or any other
9 because sometimes there are other individuals
10 involved and they don't always disclose who those
11 people are, so no, I don't have OCR's file on this.

12 BY MR. GOULD:

13 Q. Do you know whether OCR was provided any
14 depositions of witnesses?

15 A. I don't recall seeing anything that tells me
16 that; although, I can't say it's not in there, I really
17 wasn't looking for that because I was triggering
18 specifically on their conclusion and how they arrived at
19 it.

20 Q. So you don't know how OCR arrived at this
21 conclusion; correct?

22 A. I only know they got there.

23 Q. And you don't know what methodology they used
24 to get to that conclusion?

25 A. I have some knowledge of that because we watch



1 of investigation performed administratively over a
2 period of 20 months. That's some value to me, is
3 that, you know, I acknowledge it's not outcome
4 determinative, it's not law in the case, it's not
5 collateral estoppel and because they don't really
6 tell us exactly how they arrived at this, it would be
7 helpful to know that, but we don't. But I do place
8 some emphasis on it. I think that this was not an
9 investigation that transited for just two or three
10 months, it's almost two years in gestation, and it --
11 I know from the record that I saw that OCR was
12 communicating with Chadron and saw things and during
13 all of that time period, if they'd had some concerns,
14 they could have raised them at any time and I don't
15 see any evidence of that. I see --

16 BY MR. GOULD:

17 Q. You don't know how many investigators OCR were
18 actually reviewing this, Fatima Larios's complaint, do
19 you?

20 A. I have no idea.

21 Q. You don't know whether the investigators
22 actually reviewed any of the materials provided to them;
23 correct?

24 A. I do not have any specific knowledge of any
25 particular behavior of any operative at OCR and it's



1 possible that the materials were sat on a file desk and
2 never were looked at. I know from experience working
3 with people at OCR that they do typically look at
4 things, that they don't just let them sit on the desk,
5 but --

6 Q. And you don't know --

7 A. -- I don't know that for sure.

8 Q. -- case loads of the OCR investigators working
9 on the Fatima Larios case, do you?

10 A. I do not.

11 Q. Okay. You don't know what facts they relied
12 upon to reach any sort of the conclusion in this case
13 assuming that they even did reach a conclusion?

14 A. Well, I mean, I'll say this, that whatever
15 they had and whatever they obtained, and that's their
16 language, they didn't see sufficient evidence to support
17 an individual or systemic finding, so that indicates to
18 me that they had something and they did look at it;
19 otherwise, they'd be essentially not committing or
20 stating the truth because they acknowledged they
21 obtained it and they didn't see sufficient evidence to
22 support something, so somebody must have looked at
23 something, but who it was and what it was, I don't know.

24 Q. Ask you to look at question 7B here.

25 A. Sure.



1 from that. This is one where I see evidence that when
2 Title IX reached out to Ms. Larios, she ideated, which
3 she has a legal right to do, is the right to her own
4 privacy and the right to her own determination. And I
5 want to make this as clear as I can that Title IX not
6 only protects you from unconsented-to contact, but it
7 also protects your right to consent. And so as
8 difficult as young people's relationships can be, the
9 law respects a certain amount of autonomy in those
10 relationships unless the line crossed into hostile
11 environment and certainly for purposes of money damages
12 under Gebser and Davis, without actual notice and
13 deliberate indifference, there's just no case in federal
14 court.

15 Q. Okay. Isn't that a decision that a judge has
16 to make?

17 A. Well, a lot of the things I'm responding to in
18 Ms. Schuster's report, and that's really what I was
19 hired to do, was not to come here and offer my own
20 opinions apart from responding to what she has said and
21 I have to say, I read her report more in the nature of a
22 trial brief or motion for summary judgment than actual
23 expert report, so I found myself in the position of
24 clarifying what I think are very misleading statements
25 of law connected in some cases with fact.



1 Now, here, it is clearly within the purview of
2 the federal court to make its own decision on Gebser and
3 Davis. I'm not inviting a judge to give over the
4 autonomy of an Article III court to the opinion of a
5 professor in a law school, but if you -- if someone asks
6 me my opinion, that's what it is.

7 Q. Okay. So I'm looking at the basis for your
8 opinion here in question 7B and you've listed three
9 specific facts that you relied upon; is that right?

10 MS. JOYCE: Objection, form.

11 THE WITNESS: I didn't -- well, let's see
12 exactly what it is. We're looking at 7B. My
13 articulation is I reviewed materials provided me
14 under cover of the letter dated November 15, 2018, so
15 that's the basis.

16 BY MR. GOULD:

17 Q. Okay. Did Chadron State College fail to
18 adequately respond to the potential Title IX violations
19 involving Fatima Larios from an OCR administrative
20 perspective?

21 MS. JOYCE: Objection, form and foundation.

22 THE WITNESS: Well, I don't work for OCR, I'm
23 not an OCR operative, we've established that. OCR
24 itself said they didn't find individual --

25 BY MR. GOULD:



1 THE WITNESS: I was responding to very
2 specific questions. I reviewed Ms. Schuster's
3 report, I looked at some case law, limited, exactly
4 what I disclosed, and OCR guidance throughout the
5 years.

6 MR. GOULD: Okay. I think we're done. I
7 don't want to hold you up.

8 MS. JOYCE: Thank you. And I have no
9 questions. You have the opportunity to read and sign
10 your deposition transcript before it becomes final.
11 I advise you to do so. It sounds like you would like
12 to do that.

13 THE WITNESS: Yeah, I usually do because I use
14 some big icky words and I feel sorry for you.

15 THE COURT REPORTER: Are you ordering?

16 MR. GOULD: Yeah, condensed, PDF, electric. I
17 don't want a hard copy, with all the exhibits. Let's
18 make sure we have all the exhibits.

19 (The deposition concluded at 5:40 p.m.)
20
21
22
23
24
25



CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF SARASOTA)

I, TERRI L. FERREIRA, Court Reporter, certify
that PETER LAKE personally appeared before me and was
duly sworn on December 14, 2018.

WITNESS my hand and official seal this 7th day
of January, 2019.

Terri L. Ferreira
Notary Public, State of Florida
My Commission NO.: GG128993
Expires: July 1, 2020



CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF SARASOTA)

I, TERRI L. FERREIRA, do hereby certify
that I was authorized to and did stenographically
report the deposition of PETER LAKE; that a review of
the transcript was requested; and that the foregoing
transcript, pages 3 through 304, is a true record of
my stenographic notes.

I FURTHER CERTIFY that I am not a relative,
employee, or attorney, or counsel of any of the
parties, nor am I a relative or employee of any of the
parties' attorney or counsel connected with the
action, nor am I financially interested in the action.

DATED this 7th day of January, 2019.

Terri L. Ferreira, Court Reporter



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